



# EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES  
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

March 27, 2012

***Via Electronic Mail and US Mail***

EPA Docket Center, EPA West (Air Docket)  
Attention Docket ID No. EPA-HQ-OAR-2011-0729  
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**Regarding: Supplemental Comments to Document ID EPA-HQ-OAR-2011-0729-0246 on Proposed Rule, 76 Fed. Reg. 82219 (Dec. 30, 2011) in Light of Direct Final Rule Revising Federal Implementation Plans under the Cross State Air Pollution Rule, 77 Fed. Reg. 10342 (Feb. 21, 2012)**

On behalf of the, National Parks Conservation Association, the Sierra Club, Altamaha Riverkeeper, Appalachian Mountain Club, Environmental Law & Policy Center, Fall-line Alliance for a Clean Environment, Friends of the Chattahoochee, GreenLaw, Midwest Environmental Defense Center, Natural Resources Defense Council, Ogeechee Riverkeeper, Respiratory Health Association of Metropolitan Chicago, Southern Alliance for Clean Energy, Southern Environmental Law Center, and Wiregrass Energy Network, we thank you for considering these supplemental comments on the Environmental Protection Agency's proposal (1) to exempt states subject to the Cross-State Air Pollution Rule ("CSAPR" or the "Transport Rule") from applying source-specific Best Available Retrofit Technology ("BART") requirements under the Clean Air Act's regional haze program; and (2) to disapprove in part the regional haze State Implementation Plans ("SIPs") submitted by Alabama, Florida, Georgia, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, and Texas to the extent those SIPs relied on CAIR, and adopt Federal Implementation Plans ("FIPs") for those states, replacing reliance on CAIR with CSAPR. 76 Fed. Reg. 82219 (Dec. 30, 2011).

In addition to the reasons set forth in our comments submitted on February 28, 2012, Document ID EPA-HQ-OAR-2011-0729-0246 (the "February 28 Comments"), EPA cannot finalize the "better than BART" rule in light of the direct final rule that increases the CSAPR allocations for many states. *See* Direct Final Rule, 77 Fed. Reg. 10342 (Feb. 21, 2012) (the "Direct Final Rule") (increasing the state emission allocations under CSAPR for Arkansas, Georgia, Indiana, Kansas, Louisiana, Mississippi, Missouri, New York, Nebraska, Ohio, Oklahoma, South Carolina, and Texas and adjusting new unit set-asides in Arkansas, Louisiana, and Missouri). Putting aside the question of whether EPA properly revised the allocations in the Direct Final Rule, these revisions affect whether CSAPR is in fact better than BART, a conclusion that becomes even less supportable as CSAPR is weakened. Not only does the Direct Final Rule generally affect whether CSAPR is a proper BART alternative, EPA's own data establishes that the previous (more stringent) iteration of CSAPR was not better than BART at a

number of the Class I areas that are impacted by states whose emission allocations will increase under the Direct Final Rule. Thus, given the Direct Final Rule, EPA cannot rationally conclude that CSAPR is better than BART in those states.

## I. BACKGROUND

On December 30, 2011, EPA published the proposed “better than BART” rule. In its proposal, EPA sought to exempt states subject to CSAPR’s trading programs from analyzing and applying source-specific BART as required to combat regional haze under the Clean Air Act and governing regulations. This proposed exemption is premised on CSAPR’s supposed viability as a BART-alternative under the regulations contained at 40 C.F.R. 51.308(e)(3). In reliance on this premise, EPA proposed to disapprove the regional haze State Implementation Plans for a number of states to the extent that they relied on CSAPR’s precursor, the Clean Air Interstate Rule (“CAIR”), to satisfy the regional haze requirements, and to finalize regional Federal Implementation Plans that authorized reliance on CSAPR in place of CAIR.

On February 21, 2012, EPA published the Direct Final Rule. *See* 77 Fed. Reg. 10342 (Feb. 21, 2012). Barring receipt of “significant adverse comments” by March 22, 2012, EPA stated that the rule would take effect on May 21, 2012. *See id.* at 10342. In the Direct Final Rule, EPA increased the emission budgets for Arkansas, Georgia, Indiana, Kansas, Louisiana, Mississippi, Missouri, New York, Nebraska, Ohio, Oklahoma, South Carolina, and Texas.

The emission budget increases have direct implications for the “better than BART” rule. Given the substantially reduced emission reductions under the Direct Final Rule, any action on the “better than BART rule” would be premature and arbitrary in the absence of further analysis of the Direct Final Rule’s impacts on visibility in a scenario where CSAPR is substituted for BART. Specifically, EPA has not followed its own regulations, which would require the agency to evaluate whether, in light of the Direct Final Rule, CSAPR is better than BART. *See* 40 C.F.R. § 51.308(e)(3). As the distribution of emissions under BART and CSAPR respectively are substantially different, EPA must conduct dispersion modeling to show the difference in visibility under each program for each impacted Class I area on the worst and best 20 percent of days. *See* 40 C.F.R. § 51.308(e)(3); *see also* Technical Support Document for Demonstration of the Transport Rule as a BART Alternative (“TSD”), EPA Dkt. No. EPA-HQ-OAR-2011-0729, at 3 (explaining that the distribution of emissions is different under CSAPR and BART). This modeling will demonstrate greater reasonable progress only if: (1) “visibility does not decline in any Class I area;” and (2) “[t]here is an overall improvement in visibility, determined by comparing the average differences between BART and the alternative over all affected Class I areas.” 40 C.F.R. § 51.308(e)(3)(i)-(ii). In evaluating the second prong of this regulatory test pertaining to overall visibility improvement, EPA is required to undertake a state-by-state analysis (which the agency has failed so far to do). *See* 40 C.F.R. § 51.308(e)(2)(i) (requiring “[a] demonstration that the emissions trading program or other alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART *in the State* and covered by the alternative program”).

## II. THE DIRECT FINAL RULE WEAKENS CSAPR, RENDERING CSAPR AN EVEN MORE IMPROPER BART SUBSTITUTE

Putting aside the question of whether it was proper to increase the state emissions allocations for Arkansas, Georgia, Indiana, Kansas, Louisiana, Mississippi, Missouri, New York, Nebraska, Ohio, Oklahoma, South Carolina, and Texas, these increases undermine EPA's proposed finding that CSAPR is better than BART under 40 C.F.R. § 51.308(e)(3). Fundamentally, increasing the emission budgets in 13 states under CSAPR weakens the program such that it may not prevent a decline in visibility over BART at any affected Class I area, per 40 C.F.R. §51.308(e)(3)(i), and may not in fact provide greater visibility improvement across all Class I areas, or on a statewide basis, per 40 C.F.R. §51.308(e)(3)(ii) to the degree projected in the models upon which EPA relied in its proposed "better than BART" rule. EPA cannot weaken CSAPR and at the same time continue to rely on the program as a substitute for BART under the Clean Air Act's Regional Haze program without undertaking further analysis of the decline and improvements in visibility and achievement of reasonable progress goals more generally in states affected by the Final Direct Rule.

In fact, these newly authorized emission increases likely preclude CSAPR from achieving greater reasonable progress than BART at many Class I areas. For example, the substantial increases in Georgia's 2014 emission budget for the annual SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone-season NO<sub>x</sub> trading programs—40,334, 13,198, and 5,762 tons respectively—affect whether CSAPR will be better than BART at the Class I areas in Georgia, namely Okefenokee, Cohutta, and Wolf Island Wilderness Areas, as well as the out-of-state Class I areas impacted by Georgia sources, such as Great Smoky Mountains National Park (Tennessee/North Carolina), Shining Rock Wilderness Area (North Carolina), Joyce-Kilmer Wilderness Area (Tennessee/North Carolina), Cape Romain Wilderness Area (South Carolina), Sipsey Wilderness Area (Alabama), St. Marks Wilderness Area (Florida), and Chassahowitzka Wilderness Area (Florida). *See* 77 Fed. Reg. at 10343; Georgia Regional Haze SIP Submittal, January 25, 2010, Table 7.7.2-1.

Similarly, increasing Ohio's CSAPR emissions budget and relying on CSAPR in lieu of source-specific BART controls could exacerbate Ohio's impacts on the MANE-VU Class I areas. Of the 167 stacks determined to be reasonably anticipated to cause or contribute to visibility impairments in the MANE-VU Class I Areas, 28 are at 14 plants in Ohio.<sup>1</sup> Yet, under the Direct Final Rule, Ohio's 2012 and 2014 budgets for annual SO<sub>2</sub> will increase by 5,163 tons, its annual NO<sub>x</sub> budgets will increase by 2,765 tons, and its ozone-season NO<sub>x</sub> budgets will increase by 1,221 tons, without regard to the potential effect on impacted Class I areas. *See* 77 Fed. Reg. at 10344.

This story repeats itself in New York and South Carolina. In New York, under the Direct Final Rule, EPA allotted New York 5,444 more tons of emissions for the 2012 and 2014 SO<sub>2</sub> annual trading program, 694 more tons under the 2012 and 2014 NO<sub>x</sub> annual trading program, and 127 more tons under the 2012 and 2014 ozone-season NO<sub>x</sub> trading program. *See* 77 Fed. Reg. at 10345. The substantial SO<sub>2</sub> increases, combined with the NO<sub>x</sub> increases, can be

<sup>1</sup> *See* Comments on Proposed Limited Approval of Revisions to the Ohio State Implementation Plan for Regional Haze, Document ID EPA-R05-OAR-2011-0329-0004, at 6-8, filed Feb. 24, 2012 in Docket No. EPA-R05-OAR-2011-0329.

expected to affect New York's impact on Acadia National Park in Maine, Brigantine Wildlife Refuge in New Jersey, Great Gulf Wilderness Area and Presidential Range-Dry River Wilderness Area in New Hampshire, Lye Brook Wilderness Area in Vermont, Moosehorn National Wildlife Refuge and Roosevelt-Campobello International Park in Maine, and Shenandoah National Park in Virginia. *See* New York State Department of Environmental Conservation, Proposed Regional Haze Plan Revision § 1.4 (Nov. 2009).

In South Carolina, EPA approved an 8,013 ton increase to the state's 2012 and 2014 annual SO<sub>2</sub> budgets. *See* 77 Fed. Reg. at 10345. Notably, 6,001 tons of the 8,013 ton annual increase are allocated to sources that EPA assumed were BART-eligible in the "better than BART" rule, meaning that BART may well be better than CSAPR at these plants and across the state.<sup>2</sup> At a minimum, EPA cannot increase CSAPR state budgets without revising its better than BART calculations and analysis.

Newly authorized emissions increases also make clear that CSAPR as revised cannot be better than BART in states where EPA's own data showed that CSAPR in its original form was not better than BART per 40 C.F.R. § 51.308(e)(3)(ii). As discussed in the February 28 Comments, and shown in Table 1 below, EPA's own modeling analysis demonstrates that a "Nationwide BART"<sup>3</sup> scenario provides greater visibility improvement than the agency's alternative "Transport Rule + BART-elsewhere"<sup>4</sup> scenario on either the best 20% of days or the worst 20% of days at a number of Class I areas.

**Table 1. Class I Areas Where EPA's Modeling Shows "Nationwide BART" to Have Greater Visibility Improvement Compared to the "Transport Rule + BART-elsewhere"**<sup>5</sup>

Class I Area	Best 20% Days	Worst 20% Days
Badlands National Park (SD)		X
Bandelier National Monument (NM)		X
Caney Creek Wilderness (AR)	X	
Hercules-Glades Wilderness (MO)	X	
Salt Creek Wilderness (NM)	X	
San Pedro Parks Wilderness (NM)		X
Theodore Roosevelt National Park (ND)		X
Upper Buffalo Wilderness (AR)	X	
White Mountains Wilderness (NM)	X	

<sup>2</sup> *See* Comments Addressing State-Specific Impacts from EPA's Proposed CSAPR "Better-Than-BART" Rule in Alabama, Mississippi, North Carolina, and South Carolina, Document ID EPA-HQ-OAR-2011-0729-0245, at 12-14, filed Feb. 28, 2012 in Docket ID EPA-HQ-OAR-2011-0729.

<sup>3</sup> The "Nationwide BART" scenario estimated the effect of applying BART controls at specific BART-eligible sources across the entire nation, including sources in the CSAPR region in the east and sources in the non-CSAPR region in the west.

<sup>4</sup> EPA's "Transport Rule + BART-elsewhere" scenario estimated the effect of relying on CSAPR, or the Transport Rule, in CSAPR states while applying BART at BART-eligible sources outside of the CSAPR region.

<sup>5</sup> This Table is also included in the Expert Report of D. Howard Gebhart, submitted as Attachment 2 to the February 28 Comments. *See* D. Howard Gebhart, Expert Report: Technical Review of US Environmental Protection Agency Dispersion Modeling Supporting the "Transport Rule is Better than BART" Analysis 7-9 & Table 3-1 (Feb. 21, 2012).

Wind Cave National Park (SD)	X	X
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Visibility at these Class I areas will further decline under CSAPR as revised in the Direct Final Rule because EPA authorized states that impact these Class I areas to increase their emissions. For example, in the Direct Final Rule, EPA increased Arkansas's 2012 and 2014 emission budgets for ozone-season NO<sub>x</sub> by 73 tons. *See* 77 Fed. Reg. at 10343. Arkansas is home to Caney Creek Wilderness and Upper Buffalo Wilderness, Class I areas where EPA predicted that CSAPR with its original emission budgets would be worse than BART. In addition, sources in Arkansas likely impact Class I areas in neighboring Missouri, including Hercules-Glades Wilderness, another area where CSAPR prior to revisions would not be better than BART.

Similarly, EPA increased Nebraska's annual SO<sub>2</sub> emission budget for 2012 and 2014 by 3,110 tons. *See* 77 Fed. Reg. at 10344-45. Sources in Nebraska likely impact Badlands National Park and Wind Cave National Park in neighboring South Dakota and also have the potential to affect Theodore Roosevelt National Park in nearby North Dakota, Caney Creek Wilderness and Upper Buffalo Wilderness in Arkansas and Hercules-Glades Wilderness in Missouri—all Class I areas which EPA expected would see a decline in visibility under CSAPR as compared to BART prior to the revisions in the Final Direct Rule.

Likewise, EPA increased Missouri's annual NO<sub>x</sub> emission budget and ozone-season NO<sub>x</sub> emission budget for 2012 and 2014 by 26 tons. *See* 77 Fed. Reg. at 10344. Even this modest increase can affect visibility at Missouri's Hercules-Glades Wilderness, where CSAPR, prior to the emission budget increase, was shown to be worse than BART. Missouri sources also have a greater potential to cause a decline in visibility under CSAPR, as revised, at Caney Creek Wilderness and Upper Buffalo Wilderness in neighboring Arkansas.

Increases in Oklahoma's ozone-season NO<sub>x</sub> emission budgets for 2013 and 2014, and in Texas's annual and ozone-season NO<sub>x</sub> emission budgets further undermine CSAPR's viability as a BART alternative at Caney Creek Wilderness and Upper Buffalo Wilderness in Arkansas, Hercules-Glades Wilderness in Missouri, and Bandelier National Monument, Salt Creek Wilderness, San Pedro Parks Wilderness, and White Mountains Wilderness in New Mexico. Under the Direct Final Rule, EPA increased Texas's annual NO<sub>x</sub> budget for 2012 and 2014 by 2,731 tons and its ozone-season NO<sub>x</sub> budget by 1,142 tons. *See* 77 Fed. Reg. at 10345. Similarly, Oklahoma is being allotted 859 more tons under the ozone-season NO<sub>x</sub> trading program. *See id.*

Finally, EPA is increasing emissions under various CSAPR trading programs in Indiana, Kansas, Louisiana, and Mississippi. Sources in these states have the potential to affect Class I areas, including Caney Creek Wilderness and Upper Buffalo Wilderness in Arkansas and Hercules-Glades Wilderness in Missouri. Again, these are Class I areas for which CSAPR was not predicted to be better than BART even before the emission increases were authorized in the Direct Final Rule. In particular, Indiana's emission budget for the annual SO<sub>2</sub> trading program will increase by 5,338 tons for 2012 and 2014. *See* 77 Fed. Reg. at 10343-44. Kansas's annual SO<sub>2</sub> emission budget would increase by 452 tons for 2012 and 2014, whereas its annual NO<sub>x</sub> emissions budget would increase by 640 tons for 2012, and 5,794 tons for 2014. *See id.* at

10344. Both Louisiana and Mississippi were allowed increases to their ozone season NO<sub>x</sub> budgets for 2012 and 2014. Under the Direct Final Rule, Louisiana can emit 89 tons more NO<sub>x</sub> per ozone season while Mississippi can emit 115 tons more. *See id.*

Given these increases in emissions, it is highly unlikely that CSAPR could be better than BART in the states containing these Class I areas, or in the states affecting these Class I areas. As explained in the February 28 Comments, EPA cannot discount the many instances in which BART yields greater progress toward visibility goals than CSAPR by averaging visibility impacts across the entire CSAPR region, much less the entire country. Instead, EPA must determine whether a given program is better than BART on a state-by-state basis having considered what an alternative would achieve in the way of emissions reductions relative to BART at each relevant source. *See* 40 C.F.R. § 51.308(e)(2)(i) (requiring a state-by-state analysis). EPA has apparently failed to undertake any analysis at all in connection with either this rulemaking or the “better than BART” rulemaking that assesses the visibility impacts of weakening the CSAPR program—either under its flawed national and regional averaging approach, or under the proper state-by-state approach.

### CONCLUSION

For all of the reasons set forth above, in addition to the reasons set forth in the February 28 Comments, we respectfully urge EPA to abandon its proposed “better-than-BART” proposal, and any piecemeal action on Alabama, Florida, Georgia, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, and Texas’s regional haze plans. Please do not hesitate to contact undersigned counsel with any questions or concerns.




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